

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

OSCAR GARNER,)
)
Plaintiff,)
)
v.) No. 4:21 CV 876 MTS
)
DANIEL KEEN, et al.,)
)
Defendants.)

MEMORANDUM AND ORDER

This matter is before the Court upon review of a civil complaint and motion for leave to proceed *in forma pauperis* filed by Oscar Garner, an inmate at the St. Charles County Department of Corrections. The motion will be denied, and this case will be dismissed without prejudice to the filing of a fully-paid complaint.

Garner is a prisoner who, while incarcerated, has filed at least three civil actions that were dismissed on the grounds that they were frivolous or failed to state a claim upon which relief may be granted.¹ The Prison Litigation Reform Act of 1996 provides, in relevant part:

In no event shall a prisoner bring a civil action ... under this section if the prisoner has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action ... in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Therefore, this Court may not allow Garner to proceed *in forma pauperis* in this action unless he “is under imminent danger of serious physical injury.” *Id.*

¹ See *Garner v. Hill*, No. 17-cv-51 (E.D. Wis. Jan. 13, 2017) (dismissal for failure to state a claim); *Garner v. Kirby*, No. 14-cv-545 (W.D. Wis. Aug. 5, 2014) (dismissal for factual frivolousness); *Garner v. Huibregtse*, No. 09-cv-301 (W.D. Wis. May 12, 2009) (dismissal for failure to state a claim based on res judicata). See also *Garner v. Esser*, No. 17-cv-561 (E.D.Wis. Jul. 20, 2017) (discussing Garner's strikes).

In the complaint, Garner claims his constitutional rights have been violated because he has not received certain pieces of mail that were sent to him, and certain pieces of mail he has sent have not been received by the addressee. He claims “[t]he defendants mentioned in this case are destroying the plaintiff’s mail intentionally at St. Charles County Jail and not allowing him to receive mail only if it comes directly from the Court, and sometimes he [is] not receiving court mail.” He seeks monetary relief.

Garner’s allegations do not establish that he is under imminent danger of serious physical injury. He therefore may not proceed *in forma pauperis* in this action. As a result, the Court will deny Garner’s motion for leave to proceed *in forma pauperis*, and will dismiss this case without prejudice to the filing of a fully-paid complaint.

Accordingly,

IT IS HEREBY ORDERED that Oscar Garner’s motion for leave to proceed *in forma pauperis*, Doc. [2] is **DENIED**.

IT IS FURTHER ORDERED that this case is **DISMISSED** without prejudice to the filing of a fully-paid complaint. A separate order of dismissal will be entered herewith.

Dated this 27th day of July, 2021.



MATTHEW T. SCHELP
UNITED STATES DISTRICT JUDGE